

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**SRINIVASA RAO GUBBALA,**

**Plaintiff,**

**v.**

**ABERCROMBIE & FITCH  
TRADING CO.,**

**Defendant.**

**Civil Action 2:24-cv-444**

**Judge Sarah D. Morrison**

**Magistrate Judge Chelsey M. Vascura**

**ABERCROMBIE & FITCH  
TRADING CO. and  
ABERCROMBIE & FITCH CO.,**

**Counterclaimants,**

**v.**

**SRINIVASA RAO GUBBALA,**

**Counter-Defendant.**

**PRELIMINARY PRETRIAL ORDER**

The Court conducted a telephonic preliminary pretrial conference on May 21, 2024. All parties were represented by counsel.

**Rule 26(a)(1) Initial Disclosures**

The parties have agreed to make initial disclosures by **June 4, 2024**.

**Jurisdiction and Venue**

There are no contested issues related to venue or jurisdiction.

**Amendments to Pleadings and/or Joinder of Parties**

Motions or stipulations addressing the parties or pleadings, if any, must be filed no later than **June 7, 2024**.

**Motions**

There are no pending motions.

**Allegations in the Pleadings and Jury Demand**

Plaintiff/Counter-Defendant Srinivasa Rao Gubbala (“Mr. Gubbala”) seeks review of the December 8, 2023 Final Decision of the Trademark Trial and Appeal Board (“TTAB”) in Opposition No. 91255288 (“December 8, 2023 TTAB Final Decision”). The December 8, 2023 TTAB Final Decision barred registration of Mr. Gubbala’s bird mark subject of U.S. Trademark Application Serial No. 88555046 due to likelihood of confusion with Defendant/Counter-Plaintiff Abercrombie & Fitch Trading Co.’s trademark registrations for its bird designs.

Defendant/Counter-Plaintiff Abercrombie & Fitch Trading Co. and Counter-Plaintiff Abercrombie & Fitch Co. (collectively, “A&F”) assert a counterclaim seeking a declaratory judgment affirming the December 8, 2023 TTAB Final Decision denying registration of Mr. Gubbala’s bird mark due to likelihood of confusion with A&F’s bird marks. A&F also asserts counterclaims for trademark infringement, dilution, unfair competition, and deceptive trade practices based on state and federal law due to Mr. Gubbala’s use and attempts to register a bird mark design that is confusingly similar to A&F’s famous bird design trademarks, and Mr. Gubbala’s continued use and attempts to register such design even after A&F made him explicitly aware of A&F’s prior, strong, and extensive rights in A&F’s bird designs.

There is a jury demand.

### **Expert Disclosures**

Primary expert reports, if any, must be produced by **December 15, 2024**. Rebuttal expert reports, if any, must be produced by **January 31, 2025**. All expert discovery must be completed by **February 28, 2025**.

If an expert is retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony, the witness identification must consist of a report that conforms to Rule 26(a)(2), unless otherwise stipulated or ordered by the Court.

### **Discovery Deadline and Limitations**

The parties may, without further leave of Court, agree to exceed the limitations on discovery established by the Federal Rules of Civil Procedure or the Local Rules of this Court. If the parties are unable to reach an agreement on any matter related to discovery, prior to filing a motion, they are directed to arrange an informal conference with the Court.

All fact discovery shall be completed by **October 15, 2024**. For purposes of complying with this Order, the parties must schedule their discovery in such a way as to require all responses to be served prior to the deadline and must also file any motions relating to discovery within the discovery period.

The parties anticipate the production of electronically stored information ("ESI") and agree to the production of ESI and discoverable documents originating from hardcopy sources and attachments in single-page TIFF format (black and white, 300 dpi) with corresponding searchable OCR text, along with the below-listed metadata fields when available. The Parties will provide a standardized load file compatible with Relatively and with a Bates number field included in the load file to match text and metadata with TIFF images.

- a. Beginning Document Bates Number;

- b. Ending Document Bates Number;
- c. Beginning Family Bates Number (the first page of the first document in a family);
- d. Ending Family Bates Number (the last page of the last document in a family);
- e. Custodian or Source;
- f. All Custodians;
- g. Confidentiality Designation;
- h. Redacted (Y/N); and
- i. Text File Path (providing the location in the production load file for the text file).

All the foregoing shall be pursuant to the Federal Rules of Civil Procedure (“FRCP”) and subject to the parties’ forthcoming Stipulated Protective Order.

The parties intend to seek entry of a protective order or clawback agreement.

### **Dispositive Motions**

Case dispositive motions must be filed by **April 30, 2025**.

### **Settlement**

A&F has already made a settlement proposal to Plaintiff. Plaintiff shall respond by **June 4, 2024**. The parties agree to make a good faith effort to settle this case. The parties understand that this case will be referred to an attorney mediator, or to the Magistrate Judge, for a settlement conference in **July 2024**. In order for the conference to be meaningful, the parties agree to complete all discovery that may affect their ability to evaluate this case prior to the settlement conference. The parties understand that they will be expected to comply fully with the settlement order which requires *inter alia* that settlement demands and offers be exchanged prior to the conference and that principals of the parties attend the conference.

Referral to court-facilitated mediation has no effect on the case schedule. All deadlines established in this Order will remain in place unless the parties move for and are granted a

continuance or stay. In the event the parties schedule a private mediation, they may notify the Court and request to be excused from participation in court-facilitated mediation.

**Other Matters**

Any party intending to seek attorney fees and costs as a prevailing party shall make quarterly reports to the other party disclosing the to-date accrued attorney's fees and costs.

If any date set in this Order falls on a Saturday, Sunday, or legal holiday, the date of the next business day will control.

**IT IS SO ORDERED.**

/s/ Chelsey M. Vascura  
CHELSEY M. VASCURA  
UNITED STATES MAGISTRATE JUDGE